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09/836,995	04/18/2001	James F. Lee	0506-4021	7656

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EXAMINER

COCKS, JOSIAH C

ART UNIT	PAPER NUMBER
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3749

DATE MAILED: 10/08/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/836,995

Applicant(s)

LEE, JAMES F.

Examiner

Josiah C. Cocks

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on amendment filed 8/1/03.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-22 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

**DETAILED ACTION**

***Response to Amendment***

1. Receipt of applicant's amendment filed 8/1/03 is acknowledged.

***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1, 2, 7, 8, 11, 12, 15-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Gerrard* (US # 5,435,295) in view of WEBSTER'S II New Riverside University Dictionary (1984) (hereinafter "the dictionary").

*Gerrard* discloses in Figures 1-4 a fireplace grate comprising a frame (1) including a plurality of non-movable grate members (5) and non-movable cross members (10, 11, and 12), a base (2), and an upper frame/cage member (3) having a second plurality of grate members (19 and 20) and cross members (23 and 24) wherein the grate members define a compartment/cavity to hold a firelog/starter material (34) (see area defined by support members (10) and (11), and support bars (23) and (24) and Figs. 2 and 4). *Gerrard* further discloses that the support members (10 and 11) extend along the bottom of the compartment and fully support logs placed thereon (see col. 2, lines 18-24) and the ceramic logs (31, 32, and 33) are placed on top of the

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horizontal support bars (23 and 24) and direct contact is prevented between the firelog and the ceramic logs (see Fig. 4).

Claim 1 recites the limitation that the grate members and cross members define a “platform.” As found in the dictionary, a platform is “a floor or horizontal surface raised above the level of the adjacent area...” The grate members (5) and support bars (23 and 24) and (10, 11, and 12) are horizontal surfaces that support logs above the fireplace ground or floor and therefore a person of ordinary skill in the art at the time the invention was made would reasonably regard these members as “platforms.”

Claim 1 recites the limitation that the grate members and cross members also define a “substantially enclosed compartment.” Applicant contends in the response filed 10/23/02 that the fire grate described in his specification and shown in Figs. 1-7, discloses a substantially enclosed compartment whereas the fire rack of *Gerrard* does not disclose such a compartment. However, it is noted that applicant shows multiple arrangements that constitute enclosed compartments including the embodiment of Figs. 4A and 4B where only three upper support members (applicant’s items 404) are used to “enclose” a firelog, and Figs. 5A and 5B where only two pivoting members (applicant’s items 504) attached to a ceramic log (14) are used to “enclose” a firelog. The examiner regards the support bars (23 and 24), the support members (10 and 11) and the fibre logs (31, 32, and 33) to create a substantially enclosed compartment as defined in applicant’s Figures and specification.

In regard to the limitation of claims 1 and 19, that the enclosed compartment depends from the platform, the upper cage member (3) of *Gerrard* including bars (23 and 24) (which comprise a platform as noted above) form an upper surface of the compartment in which log (34)

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rests. The examiner considers this relationship to represent the enclosed compartment to depend from the upper member (3).

In regard to claim 2, frame (1) of *Gerrard* includes a base (2) that defines a cavity and further includes a cage member (3) positioned on the base (see Fig. 1) to further enclose the compartment.

In regard to claim 7, *Gerrard* discloses that additional support bars may be added as desired to provide support for additional firelogs (see col. 2, lines 22-24). The examiner regards the disclosure of the additional support for additional firelogs to be the structural equivalent of additional compartments.

In regard to claim 8, *Gerrard* discloses that a poker may be used to open the upper frame/cage member (3) by placing the end of the poker in a V-notch (28) formed in a front protector bar (27) and pivoting the upper frame/cage member (3) away from the base (2) (see col. 2, lines 57-61). The examiner regards this disclosure of the poker and its function as the equivalent of a removable handle for moving the hingeable cage member as recited in claim 8.

In regard to claim 12, *Gerrard* discloses that at least one ceramic log (any one of 31, 32, and 33) is secured to the upper frame/cage member (3) by means of pins (25 and 26) wherein the frame/cage member (3) is attached to the frame (1) by pivot arms (17) such that the ceramic logs may be pivoted between a first position which allows firelogs to be placed on the base (see col. 1, lines 33-35) and a second position which prevents direct contact between the firelog and the ceramic logs on top of the frame (see Fig. 4).

4. Claims 3, 4, 13, 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Gerrard* as applied to claim 2 above and further in view of *Kutchera* (US # 2,519,482).

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*Gerrard* discloses all the limitations of claims 3, 4, and, 13 except that the fireplace grate of *Gerrard* is explicitly hinged to the base, that the grate members include a U-shaped portion for supporting the firelog, and the ceramic log is explicitly hinged to the frame.

In regard to claims 3 and 13, *Gerrard* discloses that the upper frame/cage member (3) is pivotally connected to the base (2) (see col. 1, lines 61-62) by pivot means (9) such that this upper frame/cage member may be pivoted away from the base. *Kutchera* teaches that in the fireplace grate art, for grate sections (11) that are pivotally mounted (see col. 3, lines 23-25) the term "hinge" and "pivot" are understood to be equivalent terms for describing structure which permits the grate sections to swing from a first position to a second position (see col. 3, lines 33-35 and col. 4, lines 8-11). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made that the pivotal attachment of the upper frame/cage member of *Gerrard* would be regarded as hinged as *Kutchera* teaches that a pivot means is the equivalent of a hinge means.

In regard to claim 4, *Kutchera* discloses grate sections (11) having bars (12) that are substantially U-shaped and serve as a fuel support (see Fig. 1 and col. 3, lines 7-14). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the firelog support of *Gerrard* to incorporate the U-shaped support of *Kutchera* for the purpose of forming a grate that supports a fuel support in a configuration such that as the fuel is burned ashes collect beneath the grate on a fireplace floor (see *Kutchera*, col. 3, lines 61-64).

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5. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over *Gerrard* as applied to claim 2 above, and further in view of *Thompson* (US # 4,360,001).

*Gerrard* discloses all of the limitations of claim 5 except that the grate members include a V-shaped portion for supporting the firelog.

*Thompson* teaches a log support (21) for a fireplace grate wherein the log support is V-shaped (see Fig. 4).

Therefore, in regard to claim 5, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the firelog support of *Gerrard* to incorporate the V-shaped support of *Thompson* for the desirable purpose of forming a fuel support which creates a desirable draft space for the ignition and maintenance of a log fire (see *Thompson*, col. 1 line 68 through col. 2, line 2).

6. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over *Gerrard* as applied to claim 1 above, and further in view of *Dotson et al.* (US # 4,692,168).

*Gerrard* discloses all the limitations of claim 6 except that the firelog is a gel log.

*Dotson et al.* teaches that it is well known in the art that a starting log/firelog for a fireplace may comprise gelled fuel (see col. 3, lines 24-37). The examiner regards a firelog composed of a gelled fuel to constitute a "gel log" as claimed.

Therefore, in regard to claim 6, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the firelog of *Gerrard* to be formed from a gelled fuel as taught by *Dotson et al.* as gelled fuels provide increased heat, increased luminosity and improved safety (see *Dotson et al.*, col. 1, lines 47-49).

7. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over *Gerrard* as applied to claim 2 above, and further in view of *Fischer* (US # 4,838,781) and *Kutchera* (US # 2,519,482).

*Gerrard* discloses all the limitations of claim 9 except possibly that the upper cage member includes a hingeable door.

*Fischer* teaches a fireplace grate having an upper grate/cage member (11) and a base (13) wherein the upper grate/cage member is pivotally mounted about a front portion of the base (see Fig. 4 and col. 3, lines 52-54). The examiner regards the grate portion that is pivoted forwardly to constitute a pivotable door. Further, in view of the teaching of *Kutchera* that in the fireplace grate art, for grate sections (11) that are pivotally mounted (see col. 3, lines 23-25) the term “hinge” and “pivot” are understood to be equivalent terms (see col. 3, lines 33-35 and col. 4, lines 8-11), the examiner regards the pivotable door of *Fischer* to constitute a hingeable door as claimed.

Therefore, in regard to claim 9, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the upper frame/cage member of *Gerrard* to incorporate the hingeable door with forward pivoting of *Fischer* for the desirable purpose of allowing easy replacement and ignition of a fuel source (see *Fischer*, col. 2, lines 63-68).

8. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over *Gerrard* as applied to claim 1 and further in view of *Betenbaugh* (US # 4,257,392).



*Gerrard* discloses all the limitations of claim 10 except that the firelog is supported by at least four grate members of the frame.

*Betenbaugh* teaches a fireplace grate having grate members (13) forming a log support portion which incorporates at least four grate members (see Fig. 1 showing 11 grate members).

Therefore, in regard to claim 10, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the grate of *Gerrard* to incorporate the support having at least four grate members as taught by *Betenbaugh* as a plurality of grate members are selected to define a generally horizontally extending platform for supporting combustible logs thereon (see *Betenbaugh*, col. 2, lines 29-32).

#### ***Response to Arguments***

9. Applicant's arguments filed 8/1/03 have been fully considered but they are not persuasive. Applicant contends that amending the claims to recite that the grate members and cross members are non-movable defines applicant's invention over the *Gerrard* reference. However, the examiner has identified in *Gerrard* that the base member (2) includes grate members (5) and cross members (10, 11, and 12) that are non-movable. Further, as noted in item 3 above, "platforms" are defined as raised horizontal surfaces. The examiner regards the frame (1) of *Gerrard* as including platforms on both the base (2) portion and upper frame/cage (3) portion.

Applicant also argues that the independent claims describe only the lower portion of applicant's fireplace grate and not the upper cage member. Therefore, applicant contends, the disclosure of *Gerrard* requires the presence of the upper frame/cage portion (3) to form a

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substantially enclosed compartment and is distinct from applicant's invention. However, the examiner notes that applicant's claims do not require that the substantially enclosed compartment is formed *only* by the grate members and cross members. Applicant's claims read on a fireplace grate with grate members and cross members that may be combined with other elements to define a substantially enclosed compartments. The examiner has regarded *Gerrard* as disclosing this structure. Further, even if applicant's claims were interpreted to require that a substantially enclosed compartment is formed only by the grate members and cross members, as far as is proper, the examiner regards the base portion (2) of *Gerrard* as disclosing such a compartment. Applicant describes the area receiving log (10) as a substantially enclosed compartment but does not define what constitutes "substantially enclosed." As noted in applicant's Fig. 1, the compartment formed by the grate and cross members of base (110) has no solid walls, no end walls of any kind, and no upper wall. However, this is considered by applicant to be substantially enclosed. The examiner considers that, in *Gerrard*, a compartment formed between supports (10 and 11) and grate members (5) would also be regarded as a "substantially enclosed."

### *Conclusion*

10. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after

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the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Josiah Cocks whose telephone number is (703) 305-0450. The examiner can normally be reached on weekdays from 7:30 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ira Lazarus, can be reached at (703) 308-1935. The fax phone numbers for this Group are (703) 308-7764 for regular communications and (703) 305-3463 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0861.

jcc  
October 7, 2003

  
JOSIAH COCKS  
PATENT EXAMINER  
ART UNIT 3749